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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 Shaun N.,

7 Plaintiff,

8 v.

9 COMMISSIONER OF SOCIAL
SECURITY,

10 Defendant.

Case No. 2:18-cv-1481-TLF

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

11 Plaintiff has brought this matter for judicial review of defendant's denial of his
12 applications¹ for disability insurance and supplemental security income benefits. The
13 parties have consented to have this matter heard by the undersigned Magistrate Judge.
14 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13.

15 I. ISSUES FOR REVIEW

16 A. Did the ALJ commit harmful error in rejecting the opinions of treating
17 physicians Dinelle Pineda, M.D., and Jeffrey Dassel, M.D.?

18 B. Did the ALJ commit harmful error in discounting plaintiff's testimony
19 regarding the severity of his physical impairments?
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23 ¹ Plaintiff asserted an amended onset date of October 23, 2015. AR 277. The Administrative Law Judge's
24 decision lists the onset date as October 15, 2014. AR 19. Plaintiff has maintained the amended onset
25 date in the Opening Brief, Dkt. 10 at 2, n. 1, and refers to this discrepancy as an inadvertent mistake. On
remand, this needs to be clarified and confirmed.

1 II. DISCUSSION

2 The Commissioner uses a five-step sequential evaluation process to determine if
3 a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920. The ALJ assesses the
4 claimant's residual functional capacity ("RFC") to determine, at step four, whether the
5 plaintiff can perform past relevant work, and if necessary, at step five to determine
6 whether the plaintiff can adjust to other work. *Kennedy v. Colvin*, 738 F.3d 1172, 1175
7 (9th Cir. 2013). The ALJ has the burden of proof at step five to show that a significant
8 number of jobs that the claimant can perform exist in the national economy. *Tackett v.*
9 *Apfel*, 180 F.3d 1094, 1099 (9th Cir. 1999); 20 C.F.R. §§ 404.1520(e), 416.920(e).

10 The Court will uphold an ALJ's decision unless: (1) the decision is based on legal
11 error, or (2) the decision is not supported by substantial evidence. *Revels v. Berryhill*,
12 874 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is "such relevant evidence as a
13 reasonable mind might accept as adequate to support a conclusion." *Biestek v.*
14 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S.
15 197, 229 (1938)). This requires "more than a mere scintilla" of evidence. *Id.*

16 The Court must consider the administrative record as a whole. *Garrison v.*
17 *Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014). It must weigh both the evidence that
18 supports, and evidence that does not support, the ALJ's conclusion. *Id.* The Court
19 considers in its review only the reasons the ALJ identified and may not affirm for a
20 different reason. *Id.* at 1010. Furthermore, "[l]ong-standing principles of administrative
21 law require us to review the ALJ's decision based on the reasoning and actual findings
22 offered by the ALJ—not post hoc rationalizations that attempt to intuit what the
23 adjudicator may have been thinking." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d
24 1219, 1225-26 (9th Cir. 2009) (citations omitted).

1 A. The ALJ Erred in Rejecting Dr. Pineda's and Dr. Dassel's Opinions

2 The ALJ must provide "clear and convincing" reasons for rejecting the
3 uncontradicted opinion of a treating or examining physician. *Trevizo v. Berryhill*, 871
4 F.3d 664, 675 (9th Cir. 2017) (quoting *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194,
5 1198 (9th Cir. 2008)). When a treating or examining physician's opinion is contradicted,
6 an ALJ must provide specific and legitimate reasons for rejecting it. *Id.* In either case,
7 substantial evidence must support the ALJ's findings. *Id.*

8 Dr. Pineda examined plaintiff on October 23, 2015. AR 1005-10. Dr. Pineda
9 opined that plaintiff was markedly limited in his ability to sit, stand, walk, lift, and carry
10 due to hip and knee arthritis. AR 1006. Dr. Pineda opined that plaintiff was unable to
11 meet the demands of even sedentary work. AR 1007.

12 Dr. Dassel was Plaintiff's treating doctor. See AR 999-1001, 1022-1141. Dr.
13 Dassel opined that plaintiff could stand/walk for less than two hours in an eight-hour
14 day, sit for less than two hours in an eight-hour day, and lift or carry up to ten pounds
15 rarely. AR 1015. Dr. Dassel opined that plaintiff would need unscheduled rest breaks,
16 and would be absent three or more days per month due to his pain. AR 1015-16.

17 The ALJ gave little weight to Dr. Pineda's and Dr. Dassel's opinions. AR 24. The
18 ALJ reasoned that the doctors' opinions (1) were inconsistent with the objective medical
19 evidence, (2) were inconsistent with plaintiff's receipt of primarily conservative
20 treatment, and (3) relied on plaintiff's report of factors contributing to his pain, which
21 were not consistent. AR 25. The ALJ further reasoned that Dr. Pineda's opinions were
22 inadequately supported because her treatment notes contained minimal findings. *Id.*

23 1. Inconsistency with the Objective Medical Evidence

1 The ALJ erred in rejecting the opinions of Dr. Pineda and Dr. Dassel as
2 inconsistent with the objective medical evidence. An ALJ “cannot simply pick out a few
3 isolated instances” of medical health that support her conclusion, but must consider
4 those instances in the broader context “with an understanding of the patient’s overall
5 well-being and the nature of [his] symptoms.” *Attmore v. Colvin*, 827 F.3d 872, 877 (9th
6 Cir. 2016). The record contains x-rays and MRIs showing significant disc abnormalities.
7 See AR 1011-12, 1067, 1128-29, 1147, 1216, 1318, 1342, 1368. Plaintiff’s doctors
8 documented symptoms such as visible discomfort, slow gait, limp, and difficulty going
9 from seated to standing and vice versa. See AR 849, 1095, 1105, 1111, 1126, 1132,
10 1137, 1141. The ALJ erred in rejecting the opinions of Dr. Pineda and Dr. Dassel based
11 on a few instances of normal gait, sensation, and range of motion given the overall
12 record of plaintiff’s symptoms.

13 2. Inconsistency with Receipt of Conservative Treatment

14 The ALJ similarly erred in rejecting the opinions of Dr. Pineda and Dr. Dassel on
15 the view that plaintiff received conservative treatment. Plaintiff received, among other
16 treatment, steroid injections in his back and hip. AR 1187-88, 1308. This is not
17 conservative treatment. See *Garrison*, 759 F.3d at 1015 n.20 (“[W]e doubt that epidural
18 steroid shots to the neck and lower back qualify as ‘conservative’ medical treatment.”).
19 The ALJ inaccurately described plaintiff’s treatment, and erred in rejecting the opinions
20 of Dr. Pineda and Dr. Dassel based on that description.

21 3. Reliance on Plaintiff’s Inconsistent Reports

22 The ALJ further erred in rejecting the opinions of Dr. Pineda and Dr. Dassel
23 based on plaintiff’s alleged inconsistent reporting of factors contributing to his pain. An
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1 ALJ errs when she rejects a treating or examining doctor's opinions "by questioning the
2 credibility of the patient's complaints where the doctor does not discredit those
3 complaints and supports his ultimate opinion with his own observations." *Ryan*, 528
4 F.3d at 1199-1200; *see also Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014)
5 (holding that "when an opinion is not more heavily based on a patient's self-reports than
6 on clinical observations, there is no evidentiary basis for rejecting the opinion"). Again,
7 the record contains imaging and clinical observations supporting the doctors' opinions.
8 *See supra* Part II.A.1. Substantial evidence does not support the ALJ's conclusion that
9 Dr. Pineda and Dr. Dassel relied on plaintiff's reports more heavily than the objective
10 medical evidence.

11 4. Inadequate Support from Minimal Findings

12 Finally, the ALJ erred in rejecting Dr. Pineda's opinions as inadequately
13 supported by her minimal exam findings. The ALJ reasoned that Dr. Pineda did not
14 document whether plaintiff had strength deficits, gait abnormalities, or decreased
15 sensation. AR 25. Even where a treating physician's opinion is brief and conclusory, an
16 ALJ must consider its context in the record. *See Burrell v. Colvin*, 775 F.3d 1133, 1140
17 (9th Cir. 2014) (holding the ALJ erred in finding a treating doctor's opinion "conclusory"
18 and supported by "little explanation," where the ALJ "overlook[ed] nearly a dozen
19 [treatment] reports related to head, neck, and back pain"). As discussed above, the
20 record contained objective documentation of plaintiff's condition, such as MRIs and
21 clinical observations of symptoms. *See supra* Part II.A.1. The ALJ consequently erred in
22 rejecting Dr. Pineda's opinions as inadequately supported by her clinical findings.

1 In sum, the ALJ failed to give specific and legitimate reasons for rejecting the
2 opinions of Dr. Pineda and Dr. Dassel. The ALJ's errors must be considered harmful
3 because plaintiff's RFC would likely have been different had the ALJ properly
4 considered these doctors' opinions. See *Stout v. Comm'r Soc. Sec. Admin.*, 454 F.3d
5 1050, 1055 (9th Cir. 2006) (holding that an error is harmless only if it is
6 "inconsequential" to the ALJ's "ultimate nondisability determination"). The ALJ's ultimate
7 nondisability determination accordingly lacks substantial evidentiary support. See
8 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040-41 (9th Cir. 2007) (holding that the ALJ's
9 RFC assessment and step five determination were not supported by substantial
10 evidence where the ALJ's RFC and hypotheticals to the vocational expert failed to
11 include all of the claimant's impairments).

12 B. The ALJ Erred in Evaluating Plaintiff's Testimony

13 In weighing a plaintiff's testimony, an ALJ must use a two-step process. *Trevizo*,
14 871 F.3d at 678. First, the ALJ must determine whether there is objective medical
15 evidence of an underlying impairment that could reasonably be expected to produce
16 some degree of the alleged symptoms. *Ghanim*, 763 F.3d at 1163. If the first step is
17 satisfied, and there is no evidence of malingering, the second step allows the ALJ to
18 reject the claimant's testimony of the severity of symptoms if the ALJ provides specific
19 findings and clear and convincing reasons for rejecting the claimant's testimony. *Id.*

20 Plaintiff testified that he has difficult sitting, standing, and walking due to pain in
21 his back, knees, and hips. See AR 291, 298-99. The ALJ found that plaintiff met the first
22 step of the testimony assessment process, but that he had not met the second. See AR
23 22. The ALJ gave five reasons for this determination: First, plaintiff's testimony
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1 regarding the severity of his symptoms was inconsistent with the objective medical
2 evidence. *Id.* Second, plaintiff received only conservative treatment, suggesting his pain
3 was not as severe as alleged. AR 23. Third, plaintiff stopped working, or, more
4 accurately, receiving unemployment benefits, because he exhausted his eligibility for
5 unemployment rather than because of his alleged impairments. *Id.* Fourth, plaintiff made
6 inconsistent statements regarding his substance use. *Id.* Fifth, plaintiff participated in
7 activities that were inconsistent with the severity of symptoms he alleged. AR 24.

8 1. Inconsistency with the Objective Medical Evidence

9 The ALJ erred in rejecting plaintiff's testimony as inconsistent with the objective
10 medical evidence. Although an ALJ may consider the medical evidence in evaluating
11 the severity of a claimant's pain, "an [ALJ] may not reject a claimant's subjective
12 complaints based solely on a lack of objective medical evidence to fully corroborate the
13 alleged severity of pain." *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001)
14 (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991)) (alteration in original).
15 The ALJ's analysis here mirrored her analysis of the objective medical evidence relative
16 to the opinions of Dr. Pineda and Dr. Dassel. See AR 22, 25. The ALJ's analysis
17 accordingly fails for the same reasons. See *supra* Part II.A.1.

18 The ALJ attempted to bolster her reasoning by noting that plaintiff "alleges that
19 he spends most of his time laying down. Yet, there is little to no evidence of effects of
20 this such as reduced strength or atrophy in the lower extremity muscles." AR 22. In
21 reaching this conclusion, the ALJ went beyond her recognized level of expertise. See
22 *Moghadam v. Colvin*, No. C15-2009-TSZ-JPD, 2016 WL 7664487, at *6 (W.D. Wash.
23 Dec. 21, 2016); *Schmidt v. Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990) ("[J]udges,

1 including administrative law judges of the Social Security Administration, must be
2 careful not to succumb to the temptation to play doctor. . . . The medical expertise of the
3 Social Security Administration is reflected in regulations; it is not the birthright of the
4 lawyers who apply them. Common sense can mislead; lay intuitions about medical
5 phenomena are often wrong.”) (internal citations omitted). Whether plaintiff would be
6 expected to show a measurable level of reduced strength or atrophy based on the time
7 he spent lying down is not a commonly-established established medical fact, and the
8 ALJ erred in rejecting plaintiff’s testimony based on her assumptions.

9 2. Inconsistency with Conservative Treatment

10 The ALJ further erred in rejecting plaintiff’s testimony regarding the severity of his
11 pain as inconsistent with his receipt of conservative treatment. An ALJ may rely on
12 conservative treatment in discounting a claimant’s symptom testimony. *See Parra v.*
13 *Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007). But, as explained above, steroid injections
14 are not conservative treatment. *See Garrison*, 759 F.3d at 1015 n.20; *see also Revels v.*
15 *Berryhill*, 874 F.3d 648, 667 (9th Cir. 2017) (holding the ALJ erred in rejecting the
16 claimant’s testimony based on receipt of “conservative” treatment when she received,
17 among other things, epidural injections in her neck and back). The ALJ thus erred in
18 rejecting plaintiff’s testimony on this basis.

19 3. Receipt of Unemployment Benefits

20 The ALJ’s next reason for rejecting plaintiff’s testimony fails because it is too
21 vague. An ALJ must do more than state a general finding; she must make specific
22 findings supported by substantial evidence to reject the plaintiff’s testimony. *See Burrell*,
23 775 F.3d at 1138. The ALJ reasoned that plaintiff received unemployment benefits—
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1 which required him to state that he was available for full-time work—up to his alleged
2 amended onset date, and testified that he stopped receiving these benefits because
3 they ran out. See AR 23, 291. The ALJ then made a conclusory finding that “the
4 evidence does not reflect a substantial decline in his condition” since the time when
5 plaintiff’s benefits ran out, indicating that his impairments were not the reason he
6 stopped being available for full-time work. See AR 23.

7 But this finding is not supported by the record, which contains evidence that
8 plaintiff’s condition worsened: Dr. Pineda evaluated plaintiff on October 23, 2015, the
9 alleged amended onset date, and opined that his back and hip conditions were severe
10 enough to prevent him from working. See AR 1005-10. The ALJ did not explain how she
11 concluded that plaintiff’s condition did not worsen when Dr. Pineda found that plaintiff
12 could not meet even sedentary work demands. Given the ALJ’s errors in analyzing Dr.
13 Pineda’s opinions, the Court concludes that the ALJ also erred in rejecting plaintiff’s
14 testimony based on his receipt of unemployment benefits up to the alleged amended
15 onset date.

16 4. Remaining Reasons and Harmless Error

17 The ALJ’s last two reasons—plaintiff’s inconsistent statements and inconsistency
18 between his testimony and daily activities—are supported by substantial evidence, but
19 the reasoning is not legally supported. Plaintiff made inconsistent statements about his
20 drug use, but that is more relevant to his general truthfulness than to the severity of his
21 back pain symptoms. ALJs must focus on whether a claimant’s alleged symptoms are
22 consistent with the evidence rather than whether he or she is a truthful person. See
23 Social Security Ruling 16-3p, 2017 WL 5180304, at *11 (Oct. 25, 2017); *see also*

1 *Trevizo*, 871 F.3d at 678 n.5 (explaining that assessments of a plaintiff’s symptom
2 testimony should not “delve into wide-ranging scrutiny of the claimant’s character and
3 apparent truthfulness”).

4 Similarly, plaintiff engaged in activities that arguably could be inconsistent with
5 the severity of symptoms alleged, such as traveling to Tennessee and attending
6 orchestra performances. See AR 293-95. Yet the circumstances show plaintiff was
7 homeless when he traveled to Tennessee (leading to a reasonable inference that at
8 least one potential reason for traveling to see his family was that he needed shelter),
9 and he experienced pain during this trip to see his sick mother. AR 293-94. And the
10 record contains minimal information on the details surrounding the orchestra
11 performances plaintiff attended. See AR 295 (plaintiff testified that the building where he
12 lives offers free orchestra tickets to veterans with PTSD and he attended a couple of
13 these free shows – leading to a reasonable inference that the orchestra music may
14 have been helpful to plaintiff as a military veteran). The Court is not convinced that a
15 reasonable ALJ would have reached the same nondisability determination had she
16 properly analyzed the medical evidence and opinions, and these two reasons for
17 rejecting plaintiff’s testimony, which are weak at best, do not outweigh the ALJ’s more
18 fundamental errors. See *Burrell*, 775 F.3d at 1140 (holding that “one weak reason,”
19 even if supported by substantial evidence, “is insufficient to meet the ‘specific, clear and
20 convincing’ standard” for rejecting a claimant’s testimony) (internal quotation marks and
21 citation omitted). The ALJ therefore harmfully erred in discounting plaintiff’s testimony
22 regarding the severity of his symptoms.

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III. CONCLUSION

Based on the foregoing discussion, the Court finds the ALJ erred when she determined plaintiff to be not disabled. Defendant's decision to deny benefits therefore is REVERSED and this matter is REMANDED for further administrative proceedings. The ALJ is directed to reevaluate plaintiff's symptom testimony, and the opinions of Dr. Pineda and Dr. Dassel. The ALJ shall reevaluate plaintiff's RFC and the relevant steps of the disability evaluation, and conduct further proceedings as necessary to reevaluate the disability determination in light of this opinion.

Theresa L. Fricke
United States Magistrate Judge